



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/667,994

09/23/2003

Jatin S. Bains

1985

7590

11/27/2006

Livingston Davies
1916 Old Cuthbert Road
Cherry Hill, NJ 08034

EXAMINER

DIXON, THOMAS A

ART UNIT

PAPER NUMBER

3628

DATE MAILED: 11/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/667,994

Applicant(s)

BAINS ET AL.

Examiner

Thomas A. Dixon

Art Unit

3628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 29-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 32 is/are allowed.
- 6) ☒ Claim(s) 29-31, 33, 35, 37-39 and 41-46 is/are rejected.
- 7) ☒ Claim(s) 34, 36, 40, 48, 49 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. It is noted that this application appears to claim subject matter disclosed in prior Application No. 6,625,584, filed 5/4/99. A reference to the prior application must be inserted as the first sentence(s) of the specification of this application or in an application data sheet (37 CFR 1.76), if applicant intends to rely on the filing date of the prior application under 35 U.S.C. 119(e), 120, 121, or 365(c). See 37 CFR 1.78(a). For benefit claims under 35 U.S.C. 120, 121, or 365(c), the reference must include the relationship (i.e., continuation, divisional, or continuation-in-part) of all nonprovisional applications. If the application is a utility or plant application filed under 35 U.S.C. 111(a) on or after November 29, 2000, the specific reference to the prior application must be submitted during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. If the application is a utility or plant application which entered the national stage from an international application filed on or after November 29, 2000, after compliance with 35 U.S.C. 371, the specific reference must be submitted during the pendency of the application and within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) or sixteen months from the filing date of the prior application. See 37 CFR 1.78(a)(2)(ii) and (a)(5)(ii). This time period is not extendable and a failure to submit the reference required by 35 U.S.C. 119(e) and/or 120, where applicable, within this time period is considered a waiver of any benefit of such prior application(s) under 35 U.S.C. 119(e),

Art Unit: 3628

120, 121 and 365(c). A benefit claim filed after the required time period may be accepted if it is accompanied by a grantable petition to accept an unintentionally delayed benefit claim under 35 U.S.C. 119(e), 120, 121 and 365(c). The petition must be accompanied by (1) the reference required by 35 U.S.C. 120 or 119(e) and 37 CFR 1.78(a)(2) or (a)(5) to the prior application (unless previously submitted), (2) a surcharge under 37 CFR 1.17(t), and (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional. The petition should be addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

If the reference to the prior application was previously submitted within the time period set forth in 37 CFR 1.78(a), but not in the first sentence(s) of the specification or an application data sheet (ADS) as required by 37 CFR 1.78(a) (e.g., if the reference was submitted in an oath or declaration or the application transmittal letter), and the information concerning the benefit claim was recognized by the Office as shown by its inclusion on the first filing receipt, the petition under 37 CFR 1.78(a) and the surcharge under 37 CFR 1.17(t) are not required. Applicant is still required to submit the reference in compliance with 37 CFR 1.78(a) by filing an amendment to the first sentence(s) of the specification or an ADS. See MPEP § 201.11.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory

Art Unit: 3628

obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2 Claim 44 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 3 of U.S. Patent No. 6,625,584.

Though the claims are not identical, the formula used is the same and the differences in the claim are seen to be obvious variants.

Specification

3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Claim Objections

4. Claim 45 is objected to because of the following informalities:
specifically, line 8 of the claim lacks punctuation.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 45 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

the period at the end of line nine appears to end the claim, but turning the page, it appears that lines 10-14, which actually perform the calculation are seen to be part of the claim.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 29-31, 33, 35, 37-38, 42-43 are rejected under 35 U.S.C. 102(b) as being anticipated by Check Jr, et al (4,180,856).

As per Claim 29.

Check Jr, et al ('856) discloses:

a central controller including a CPU and a memory operatively connected to such CPU, see figure 5 (10, 16, 17);

at least one terminal, adapted for communicating with such controller, for transmitting to the central controller shipment pricing information including service category, see figures 2, 3, and 11 (502, 504, 510);

the memory in such central controller containing a program, adapted to be executed by the cpu for calculating a freight rate for shipping cargo within a future period, for a particular freight rate, into which a shipper inputs at least one of loading port, discharge port, service category, see figure 7 (destination zip code) and figure 11 (class selection);

wherein the central controller receives such information from said terminal and calculates the freight rate based upon the information provided, see figure 11 (postage calculation)..

Art Unit: 3628

As per Claim 30.

Check Jr, et al ('856) further discloses:

the program is adapted to receive a customer request input via said terminal to purchase the shipment. see figures 2 and 11, and performing a credit check, see column 4, lines 18-54.

As per Claim 31.

Check Jr, et al ('856) further discloses:

the program is adapted to receive a customer request input via said terminal to purchase the shipment and further adapted to generate a booking form . see figures 3, 11 (postage)..

As per Claim 33.

Check Jr, et al ('856) discloses:

a data processing machine for determining a freight rate to engage shipping space comprising a CPU and a memory operatively connected to such CPU, see figure 5 (10, 16, 17). the cpu and memory cooperatively adapted to receive shipping pricing information and to calculate a price to engage such shipment within a future period, for a particular freight rate, satisfying the cargo transport information submitted, see figure 11 (502, 504, and 510);

As per Claim 35.

Check Jr, et al ('856) further discloses:

data received includes at least one of loading port, discharge port, service category, see figure 7 (destination zip code) and figure 11 (class selection);

As per Claim 37.

Check Jr, et al ('856) discloses:

receiving cargo transport parameters relative to a shipment, see figure 5 (10, 16, 17).; calculating a price for a shipment within a defined shipping period for a particular price, in which the shipment satisfies the cargo transport parameters, , see figure 11,(502, 504, and 510); and outputting a freight rate, see figure 11 (postage).

As per Claim 38, 42.

Check Jr, et al ('856) further discloses:

receiving an indication that a customer has purchased the booking and updating a database to reflect the sale of the booking, see figures 3, 11 (postage) and column 4, lines 18-54 ..

As per Claim 43.

Check Jr, et al ('856) further discloses:

Art Unit: 3628

options for pricing, see figures 3, 11 (select class) ..

7. Claims 37, 41-42, 46-47 are rejected under 35 U.S.C. 102(b) as being anticipated by Roach (5,310,997).

As per Claim 37.

Roach ('999) discloses:

receiving cargo transport parameters relative to the future booking of a shipment, see figures 4c (freight), 4a (delivery charge);

calculating a price for a shipment within a defined shipping period for a particular price, in which the shipment satisfies the cargo transport parameters, see figures 4c (freight), 4a (delivery charge); and

outputting the freight rate, see figures 4c (freight), 4a (delivery charge) and figure

5.

As per Claim 41.

Roach ('997) further discloses:

receiving a request to purchase the freight shipment; receiving the purchase price, receiving tender of the purchase price from the customer, performing a transaction to sell the freight shipment to the customer and storing information regarding the shipment, see figures 4c (freight), 4a (delivery charge).

As per Claim 42.

Roach ('997) further discloses:

receiving a request to purchase the freight shipment; performing a transaction to engage ship space for the customer in accordance with the terms of the cargo transport parameters, and modifying the database to reflect the sale of the shipping space pursuant to the engagement, see figures 4c (freight), 4a (delivery charge) and figure 5..

As per Claim 46.

Roach ('999) discloses:

inquiring on a freight rate for a shipping space, see figures 4c (freight), 4a (delivery charge);

receiving said shipping price, see figures 4c (freight), 4a (delivery charge);

receiving an offer to purchase for a given price an option to engage within a shipping period, for a particular freight rate, the shipping space booking, see figures 4c (freight), figure 4a (delivery charge), figure 4e (schedule and ok) and figure 5; and

purchasing said option at said option price, see figures 4c (freight), 4a (delivery charge) and figure 5.

As per Claim 47.

Roach ('997) further discloses:

Art Unit: 3628

engaging the shipping space or an equivalent, see figures 4c (freight), 4a (delivery charge), 4e (schedule) and 5.

Allowable Subject Matter

8. Claims 34, 36, 40, 48, 49 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

9. Claims 32 are allowable.

10. The following is a statement of reasons for the indication of allowable subject matter:

As per Claim 32, 45.

The prior art of record, specifically, Check Jr, et al ('856) in view of Roach ('999) does not disclose or fairly teach:

the method of determining the price of shipping freight and booking same comprising the steps:

entering loading port parameters, discharge port parameters, transit time and routing parameters, service category parameters, commodity type parameters, and shipment equipment type parameters and

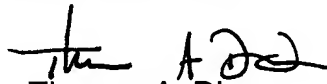
calculating the freight rate of a shipment that gives the customer a right to ship within a defined shipping period for a particular freight rate a shipment of cargo satisfying the load port, discharge port, transit time, service category, commodity and equipment requirements.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas A. Dixon whose telephone number is (571) 272-6803. The examiner can normally be reached on Monday - Thursday 6:30 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571) 272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Thomas A. Dixon
Primary Examiner
Art Unit 3628

November 06